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November 25, 2008

Ross Johnson, Chairman  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Re: Proposed Revisions to FPPC Regulation 18944.1 – Tickets to Public Agency  
Owners of Public Facilities

Dear Chair Johnson:

On behalf of the League of California Cities, City Attorneys Division, FPPC Committee and constituent California cities affected by the proposed regulation, we submit the following comments for your consideration relative to the above-referenced agenda item. As you know, we have worked closely with the Commission and staff in identifying the universe of concerns and possible solutions to how agencies and officials handle tickets and passes. We remain convinced that any excesses are certainly not “the rule,” but agree that such excesses impact the impression public officials make on those we serve.

On October 15<sup>th</sup> we met with your staff to better understand how we might integrate our solutions in a manner that addresses the Commission’s concerns. We left that meeting with valuable new insights and pledged to offer our suggested changes within the format of the draft regulation the Commission reviewed on September 11<sup>th</sup>. The attached draft regulation represents our attempt to work within the format of your revisions and the goals you directed staff to pursue.

#### **THE DRAFT REGULATION**

We think the draft regulation accomplishes the transparency and accountability that all seek to achieve. It also avoids the intellectual or legal difficulty we have in transforming tickets received by the public agency as consideration for a lease or contract into a gift. We remain convinced that a public agency cannot make a legal gift of public assets or resources.

On September 11<sup>th</sup>, the Commission focused on tickets which can be gifts and tickets which can be income or perks. The attached proposed regulation, which maintains that distinction, provides as follows:

- Tickets or passes provided by a third party (e.g., not the official's agency) for an official to attend a ceremonial function or role are not considered a gift to the official (18944.1(a)).
- If the agency provides a ticket or pass to an official, that ticket or pass is not subject to provisions of this regulation, provided the official treats the ticket or pass as income consistent with applicable state or federal income tax laws and the agency follows the provisions of Subdivision (d) (Posting on the Website).

The key change here is that in order for a ticket or pass provided by an agency to its official to be exempt from the application of the regulation, the official, rather than the agency, must treat that ticket or pass as income consistent with applicable state or federal income tax laws. This places the responsibility on the official to report the income appropriately since, as can be explained more fully at the Commission hearing, it would be difficult for the agency to determine the income implications for each individual. (18944.1(b)(1)).

- Subsection (b)(2) attempts to provide a companion exception for tickets similar to the Gifts to an Agency exception, 18944.2.
- Subsection (b)(2)(B) addresses the ticket or pass provided by the agency to an official which the agency obtains pursuant to the terms of the contract for use of public property or because the agency controls the event (such as a state or county fair) or is purchased by the agency at fair market value. Distribution under this provision is only permitted if the distribution and reporting comply with the very detailed local policy adopted pursuant to 18944.1(c) and (d).

Existing Commission policy only provides that a local agency must adopt a policy for the distribution of tickets to qualify for an exception to the gift regulations. The proposal outlined in Subsection (c) goes further than not only the existing regulation, but also draft regulations that the Commission considered on September 11<sup>th</sup>. The proposed regulation, for the first time, would set forth minimum standards for the policy adopted by the local agency.

The policy provides, significantly, as follows:

- Any distribution of tickets by an agency to or at the behest of, its official must be made pursuant to this policy, and if the agency maintains a website, the policy must be posted on the website in prominent fashion.
- The policy must provide a statement setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes;

- The policy must include a provision requiring that the distribution of any tickets or passes by the agency to, or at the behest of, an official to accomplish a public purpose of the agency; and
- A provision prohibiting the transfer by any official of any ticket or pass, distributed to such official pursuant to the agency policy, to any other person, except to members of the official's immediate family.

Finally, as you will see from the strike-out version prepared by your staff, the draft regulation submitted with this correspondence follows the draft regulation reviewed by the Commission

In conclusion, we believe the draft policy, if pursued by the Commission, will add a significant amount of transparency and accountability over the current rules. It will, for the first time, require both the agency and the official to account for and report the distribution and use of the tickets in a very prominent fashion on the agency's website or otherwise. In addition, it imposes significant limitations on the number of tickets that can be distributed, most prominently with respect to tickets or passes provided by an agency pursuant to the terms of the contract for use of public property or because the agency controls the event such as stadium contracts or state or county fairs.

Again we appreciate the Commission's time and attention to this matter and look forward to working with you as the policy develops.

Sincerely,

Michael D. Martello  
City Attorney

cc: FPPC Committee, JoAnne Speers, Cristina Talley, Michele Beal Bagneris

1 § 189441.1 Gifts: Tickets or Passes to Events.

2 (a) Ticket or pass provided by source other than official's agency. A ticket or pass  
3 provided to an official for his or her admission to an event at which the official performs a  
4 ceremonial role or function on behalf of the agency is not a gift to the official.

5 (b) Ticket or pass provided to official by official's agency.

6 (1) When an agency provides a ticket or pass to an official of that agency, the ticket or  
7 pass is not subject to the provisions of ~~subdivision (b)(2) of this regulation~~, provided that:

8 ~~the agency official~~ treats the ticket or pass as income consistent with applicable state  
9 and federal income tax laws and the agency follows the provisions of the subdivision (ed) below:

10 ~~or (B) the official reimburses the agency for the cost of the ticket or passes.~~

11 (2) When an agency provides a ticket or pass to a public official that allows admission to  
12 a facility, event, show, or performance for an entertainment, amusement, recreational, or similar  
13 purpose and that otherwise meets the definition of gift under Section 82028 and is not exempt  
14 under applicable Commission regulations, the official will meet the burden under Section 82028  
15 that equal or greater value has been provided in exchange therefor, provided that all the  
16 following requirements are met:

17 (A) With respect to a ticket or pass from an outside source provided to an official by the  
18 official's agency:

19 (i) The ticket or pass is not earmarked by the original source for use by the agency  
20 official who uses the ticket or pass;

21 (ii) The agency determines, in its sole discretion, which official may use the ticket or  
22 pass; and

23 (iii) The distribution of the ticket or pass by the agency is made in accordance with a  
24 policy adopted by the agency in accordance with subdivision (d) below.

25 (B) With respect to a ticket or pass provided by the official's agency to an official, which  
26 ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public  
27 property, (ii) because the agency controls the event (such as a state or county fair), or (iii) that is  
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1 purchased by the agency at fair market value, the distribution of the ticket or pass is made in  
2 accordance with a policy adopted by the agency in accordance with subdivision (c) below.

3 (c) Any distribution of tickets or passes under subdivision (b)(1)(A) or (b)(2) by an  
4 agency to, or at the behest of, its officials must be made pursuant to a written policy duly adopted  
5 by the legislative or governing body of the agency. If the agency maintains a website, the  
6 written policy shall be posted on such website in a prominent fashion. The written policy shall  
7 contain, at a minimum, the following:

8 (1) a provision setting forth the public purposes of the agency to be accomplished by the  
9 distribution of tickets or passes;

10 (2) a provision requiring that the distribution of any ticket or pass by the agency to, or at  
11 the behest of, an official accomplish a public purpose of the agency; and

12 (3) a provision prohibiting the transfer by any official of any ticket or pass, distributed to  
13 such official pursuant to the agency policy, to any other person, except to members of the  
14 official's immediate family.

15 (d) The distribution of a ticket or pass pursuant to this regulation, including a ticket or  
16 pass that is provided under subdivision (b)(1)(A) above, shall be posted, on a form provided by  
17 the Commission, in a prominent fashion on the agency's website, within 30 days after the  
18 distribution. If the agency does not maintain a website, the form shall be maintained as a public  
19 record, be subject to inspection and copying under Section 91008(a), and be forwarded to the  
20 Commission for posting on its website. The posting shall include the following:

21 (1) the name of the person receiving the ticket or pass, except that if the ticket or pass is  
22 distributed to an organization outside the agency, the agency may post the name, address, and  
23 description of the organization in lieu of posting the name of the individual from the organization  
24 who ultimately received the ticket or pass;

25 (2) a description of the event,

26 (3) the date of the event;

27 (4) the face value of the ticket or pass; and  
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1 (5) except for a ticket or pass provided under subdivision (b)(1), -a description of the  
2 public purpose under which the distribution was made.

3 (f) Any public purpose identified in the agency's policy shall be presumed to be a valid  
4 public purpose, absent an order or judgment of a court of competent jurisdiction to the contrary.  
5 Nothing in this regulation shall be construed as usurping or otherwise interfering with the  
6 discretion of the legislative or governing body of an agency to determine whether the distribution  
7 of a ticket or pass serves a legitimate public purpose of the agency.

8 (g) The provisions of subdivision (b) shall apply only to the benefits the official receives  
9 by the admission to the event for which the ticket or pass is provided, and are not applicable to  
10 any other benefits the official may receive that are not included with the admission, such as food  
11 or beverages, or any other item presented to the official at the event.

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13 Note: Authority cited: Section 83112, Government Code.

14 Reference: Section 82028, Government Code.  
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